

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KIMBRA CRISWELL,)	
)	
Plaintiff,)	
v.)	C.A. No. 05-CV-00321 GMS
)	
LYDIA ADAIR MCFADDEN and CHRISTIANA)	JURY TRIAL DEMANDED
CARE HEALTH SERVICES, INC.,)	
)	
Defendants.)	

**DEFENDANTS' MOTION IN *LIMINE* TO PRECLUDE PLAINTIFF FROM
PRESENTING PHOTOGRAPHS NOT IN EVIDENCE**

WHITE AND WILLIAMS LLP

/s/ Deborah J. Massaro
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Date: March 30, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KIMBRA CRISWELL,)	
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Plaintiff,)	
v.)	C.A. No. 05-CV-00321 GMS
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LYDIA ADAIR MCFADDEN and CHRISTIANA)	JURY TRIAL DEMANDED
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Defendants, Lydia Adair McFadden and Christiana Care Health Services, Inc., hereby respectfully request that the Court enter the attached order precluding Plaintiff from presenting photographs not previously presented in evidence. In support of their motion, Defendants state the following:

1. This case is a personal injury action in which Plaintiff alleges that she sustained injuries to her left ankle, foot and knee which occurred during a work related incident on May 23, 2002 at Christiana Hospital.¹ Plaintiff seeks compensatory damages, lost wages and medical bills.

2. Through the course of Discovery, Plaintiff provided Xerox copies of five color photographs. At the time of Plaintiff's deposition, July 14, 2006, actual

¹ Pending before the Court is Defendants' Motion for Summary Judgment based on the workers' compensation exclusivity bar. See Dkt. No. 35.

photographic copies of these photographs were requested by Defense counsel.² To date these photographic copies have never been provided.

3. More importantly, during Plaintiff's deposition she referred to a separate set of 75 to 100 color photographs which were taken of her left foot on different dates over a two year period.³ At that time, and in a letter subsequently, color copies of these photographs were requested by Defense counsel.⁴

4. Furthermore, Defendants' Interrogatory No. 7 addressed to Plaintiff dated February 28, 2006, requests photographs in regard to any issue in this litigation. Only the Xerox copy of five photographs has ever been produced in evidence.

5. Pursuant to the Court's Trial Scheduling Order the Discovery Cut-Off date was October 11, 2006. Throughout the course of Discovery plaintiff has submitted no color photograph copies to Defendants, despite numerous requests, starting with Interrogatory Requests in February 2006.

6. Plaintiff's last minute strategy of producing exhibits for trial which have not been previously introduced into evidence makes it impossible for Defendants to prepare their defense since they have not even seen the documents Plaintiff indicates that she is intending to rely upon at trial.

7. Pursuant to Federal Rule of Evidence 403, the Court may exclude evidence, even relevant evidence, if its probative value is substantially outweighed by the danger of unfair prejudice to the opposing party. With respect to the admissibility of

² A20 (D.C. Tr. at 20). The phrase "K.C. Tr." refers to the deposition transcript of Plaintiff attached to Defendants' Motion for Summary Judgment. Page 20 is also attached to this motion.

³ A59-60 (D.C. Tr. at 59-60). The phrase "K.C. Tr." refers to the deposition transcript of Plaintiff attached to Defendants' Motion for Summary Judgment. Pages 59-60 are also attached to this motion.

⁴ *Id.* A113 (Letter to Plaintiff's counsel from Defendants dated February 20, 2007).

evidence under Rule 403, “a trial judge is given broad discretion in weighing the probative value of evidence against its potential prejudicial effect.”⁵

8. Thus, because the photographs represent unfair prejudice to the Defendants, Plaintiff should not be permitted to present any photographs at trial since they have not been previously produced into evidence.

WHEREFORE, Defendants, Lydia Adair McFadden and Christiana Care Health Services, Inc., respectfully request that this Honorable Court enter an order precluding Plaintiff from presenting any photographs at trial as the proposed exhibits are not in evidence.

Respectfully submitted,

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⁵ *U.S. v. Guerrero*, 803 F.2d 783, 785 (3d Cir.1986).

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CERTIFICATE OF SERVICE

I, Deborah J. Massaro, Esquire, do hereby certify that on this 30th day of March, 2007, two copies of **DEFENDANTS' MOTION IN LIMINE TO PRECLUDE PLAINTIFF FROM PRESENTING PHOTOGRAPHS NOT IN EVIDENCE** were served via electronic filing and delivered U.S. First Class Mail, postage prepaid upon the following:

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